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SIPDIS

DEPT FOR EB/TPP/IPE JENNIFER BOGER, RACHEL WALLACE AND ROBERT WATTS
DEPT PLS PASS TO USTR JENNIFER CHOE GROVES, KATHARINE DUCKWORTH
DOC/ITA/MAC/OIPR FOR CATHERINE PETERS
PLEASE PASS TO USPTO JURBAN AND LOC STEPP

SIPDIS
SENSITIVE

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SUBJECT: ARGENTINA'S 2008 SPECIAL 301 REVIEW

REF: A. STATE 9475
[1](#)B. 07 BUENOS AIRES 335
[1](#)C. 07 BUENOS AIRES 927

Summary

[1](#)1. (SBU) In 2007, Argentine authorities responsible for providing "adequate and effective protection to intellectual property rights" made few meaningful improvements in IPR legislation, regulation and enforcement, and there remain serious weaknesses in each of these areas. Customs authorities' implementation of a new trademark fraud prevention program and expanded federal police agencies seizures of pirated goods were notable positive exceptions. Proposed legislative amendments and regulations to strengthen the IPR regime were not implemented in 2007, and, in fact, a proposal by the executive branch to limit border protections would represent a step in the wrong direction, if implemented. On patents, the application process continued to improve, with more and more timely adjudications. However, the application backlog from previous years remains large, effectively curtailing the period of patent protection, and injunctive relief for patent infringement continues to be complex, slow and variably enforced. On the key issue of "data confidentiality," there has been no progress, with proprietary third-country pharmaceutical data routinely used by domestic competitors in violation of TRIPS Article 39.3. On copyrights, CD and DVD piracy remains prevalent, and illegal internet downloading/distribution has continued to rise in step with expanded broadband access. Trademark falsification remains widespread, with illegal markets poorly policed. Minimalist fines and penalties offer little deterrent to falsification. On the positive side, Customs authorities took advantage of broader trademark enforcement powers in 2007, seizing a significantly higher amount of counterfeit goods, and there were several substantial seizures of blank and pirated discs. While those are certainly steps in the right direction, the overall lack of progress (and the unfortunate backwards movement on border protection initiated by the GoA) leads Embassy to recommend that Argentina remain on the Priority Watch List in 2008. A report card on Embassy's 2007 IPR action plan (Ref C) and a presentation of our IPR objectives for 2008 will be detailed Septel. End Summary.

Patents

¶2. (SBU) Argentina's patent and trademark agency, the National Institute of Industrial Property (INPI), has made significant progress toward streamlining Argentina's patent system over the past several years. That system appeared close to breakdown until 2002, with patent applications coming in much more quickly than they could be processed. From 1995 until 2002, for example, INPI received 47,573 patent applications, but was able to resolve only 28,186 of those in the queue, for a deficit of over 19,000 applications in those eight years alone. The backlog has since declined, with INPI receiving 27,342 patent applications in the 2003-2007 period, while resolving 31,561 during the same period. (Note: This represents total resolutions, which include cases rejected for procedural reasons or abandoned. End Note.) INPI officials are targeting 7,300 final approvals and denials in 2008, up 15% from nearly 6,400 such adjudications in 2007.

¶3. (U) INPI's improved efficiency stems from a number of reforms implemented beginning in 2003, including fast-track procedures to reduce a patent application backlog of over 30,000 cases. All applicants with more than one patent application pending were given the opportunity in 2005 to rank-order their applications (with some restrictions), allowing them to jump the application of a potentially more-valuable product ahead of a less-promising application that had been submitted at an earlier date. A second such rank-order exercise was carried out in March 2007. Since 2003, U.S. and other research-based pharmaceutical companies are also allowed to present studies used in third country patent applications to support patent requests in Argentina, significantly easing INPI's investigation requirements.

¶4. (SBU) The GOA also increased INPI's real budget resources to allow the hiring of 27 new patent examiners in 2004, doubling the number of pharmaceutical examiners from 10 to 20. According to INPI, improved in-house training has boosted the average number of applications resolved per examiner per year from 52 in 2004, 69 in 2005, and 84 in 2006 to 89 in 2007, a 71% improvement in the last three years. In another positive development, Post arranged for one of INPI's patent supervisor to attend a 2007 training course on advanced patent adjudication at the U.S. Patent and Trademark Office's (USPTO) academy. The training was funded by the USPTO, and travel by CAEME (the Argentine Chamber of Medicinal Specialties, an association that represents U.S. and other research-based pharmaceutical companies).

¶5. (SBU) These gains, while undeniably positive, proceed from a very low baseline. The right to patent pharmaceutical products in Argentina was recognized only in 1996, and the first pharmaceutical patents for approximately 80 products of marginal commercial value were only issued following the expiration of the TRIPS transition period in October 2000. A small number of other pharmaceutical patents of greater value were granted in subsequent years, but only after long and arduous processes.

Many of the patent applications INPI counted as "resolved" during 2005 were simply discarded after the applicant failed to respond to an INPI instruction to formally reaffirm the application during the rank-ordering process (in 2005, but not in 2007). According to statistics provided by INPI leadership to Post, 4807 applications were abandoned in 2005 (as compared to an average of 406 in the preceding eight years, and just 155 in 2006). Without those abandoned applications increasing the total resolutions, the backlog would have increased slightly from 2003- 2007. (Note: While INPI declined to its their estimate of the current year-end 2007 patent application backlog, local industry source estimate it to be in the 23-24,000 range. End Note.)

¶6. (SBU) With the Argentine 15 year patent protection clock starting at the time of application rather than issuance, U.S. research-based pharmaceutical companies operating here complain that INPI's extended patent processing backlog effectively curtails their period of exclusive patent protection. For example, most patents issued by INPI in 2006 had been applied for no later than in 2001, and applications for pharmaceutical and other chemical products take longer than average to process. INPI faces the continuing challenge of maintaining adequate human resources, with trained examiners frequently hired away by the private sector and long in-house training periods required to bring newly hired examiners up to competence. Fortunately, for 2008, the INPI budget for patent examiner salaries increased 46%, after rising 58 in 2007. The 2008 budget includes additional funding for new examiners and incentives for examiners to complete more cases. No new patent

examiners were actually hired in 2007, so the salary increases represent higher pay and incentive bonuses for examiners.

17. (SBU) The lack of patents for many products, coupled with Argentina's devaluation in 2002, which resulted in sharp price increases for imported products, increased incentives for local pharmaceutical companies to produce unlicensed copies of products that had been patented or for which patents were pending. The combination of these factors has had a negative effect on the Argentina-derived business of U.S.-based pharmaceutical companies. According to CAEME, local pharmaceutical firms hold over 50 percent of the Argentine prescription and over-the-counter market as well as almost 50 percent of the export market. (Note: not all local pharmaceutical firms are perceived as patent infringers. Some of the producers/exporters, according to CAEME, deal only in products which are either licensed or have expired patent protection, and therefore are legitimate generics. End Note.) Argentina amended its patent law (Law 24481) in December 2003 to implement an agreement between the USG and the GOA that had been signed in May 2002. That agreement came after approximately three years of consultations under the WTO's dispute settlement mechanism.

18. (SBU) The most important unresolved pharmaceutical patent issue remains the lack of effective "data protection" (i.e., the legal protection of confidential and proprietary data developed by pharmaceutical companies that demonstrates the efficacy and safety of new medicines). U.S. and other research-based pharmaceutical companies (as well as plant biotech firm Monsanto) believe this to be the most significant IPR challenge they face. Argentina and the U.S. have agreed to leave this issue within the WTO dispute settlement mechanism for future action. GoA policies have led research-based pharmaceutical companies to complain that Argentine health regulatory authorities (in particular ANMAT, the National Administration of Medicines, Food, and Medical Technology, the equivalent of the FDA) rely inappropriately on data developed by research-based companies and presented by companies which did not participate in such research to ANMAT to obtain marketing approval of unauthorized copies of innovative medicines. According to CAEME, ANMAT interprets the public disclosure of partial data as an indicator that the data should be regarded as in the public domain. Article 39.3 of the TRIPS agreement requires WTO members to protect data submitted for pharmaceutical marketing approval "against unfair commercial use" and "disclosure." The GoA argument appears to be based upon the fact that infringing companies need only present publicly-available information, such as an existing FDA approval of a product, rather than confidential portions of clinical studies results. This might seem to be protection against "disclosure" on the part of the GoA, and also avert the issue of "unfair commercial use." The question remains, however, as to what exactly constitutes unfair use of protected data. If an infringer can obtain permission to market their copied products doing what is legal, there appears to be no need to even attempt "unfair" methods. CAEME, in a December 2007 letter to Post, concludes that "in practical terms, there is no protection of confidential data."

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19. (SBU) U.S. pharmaceutical companies also remain concerned about the legal implications of two specific clauses in the 2003 amendment. Specifically, it mandates an expert opinion, and requires consideration of the economic impact of an injunction on both parties to determine whether or not goods alleged to violate the patent law should be seized. When the amendment was passed into law, research-based pharmaceutical companies feared that those clauses could preclude the granting of preliminary injunctive relief and limit the success they have achieved in protecting their products through the use of preliminary injunctions.

110. (SBU) Those fears have been realized. In January 2007, Bristol-Myers Squibb (BMS) received a patent for a product already being produced without permission by competitors, a clear example of the lack of data protection. By February, BMS obtained a preliminary injunction blocking illegal copies of the product. The court cited TRIPS procedures as reasons for granting the injunction. However, in May 2007, the injunction was overturned on appeal. BMS was forced to file the case based not on TRIPS treaty obligations, but on Argentina's patent law alone. This process is much slower - while the initial injunction took barely a month (in a time of year when many courts are closed), no action has been achieved in over six months since the appeal. Prior cases illustrate other weaknesses in the injunction

process of the patent law. In 2005, Eli Lilly discovered several Argentine competitors selling copies of its lead oncological drug, and sought injunctions to prevent those sales. An injunction against one infringer was issued after an 18-month judicial process, but was later revoked when the infringer presented what it claimed was an alternate process to produce the medication (the patent is based on the process, not the molecule, as in the BMS case), without evidence that the process was in use, or that it even worked. For another infringer, the application for an injunction was rejected by a judge convinced by a local expert hired by the defense, who claimed that the copycat drug did not violate the U.S. pharmaceutical company's patent. Of the three known infringers of Eli Lilly's medication, two had already signed agreements in court not to produce copies, and proceeded - and still continue, in 2007 - to violate those agreements. In another instance, Merck Sharp and Dohme went to court in 2005 to remove five copies of one of its joint-venture drugs from the Argentine market. In a promising ruling, the judge issued injunctions ordering the copies off the market. More than 30 months after the decision, however, those injunctions have yet to be enforced - despite the fact that the judge in the case ruled the legal basis for the copy drug's approval unconstitutional, as well as in violation of TRIPS Article 39.3. (Note the injunction ordered ANMAT to rescind marketing approval of the copy product, which ANMAT has not yet done. According to CAEME, the only further legal recourse available to Merck would be to demand the arrest of those responsible for the GoA's failure to comply with the court order - the Director of ANMAT and/or the Minister of Health. Merck is unwilling to pursue this course of action. End Note.)

¶11. (SBU) A frequent complaint of U.S. pharmaceutical companies is that there remains in Argentina no regulatory linkage between INPI and ANMAT. Its absence in Argentina allows ANMAT to grant local pharmaceutical producers authorization to manufacture and sell products that have already been patented or for which a patent has been requested. The Embassy and multinational pharmaceutical companies have urged the GOA to establish a linkage between ANMAT and INPI that would prevent ANMAT from continuing to authorize local pharmaceuticals to produce products for which an INPI patent has been granted or is pending. While such linkage is not explicitly required by TRIPS, its implementation would provide a potential remedy for the lack of data protection. There were hints during 2005 of the beginnings of a cooperative relationship between INPI and ANMAT, but the Embassy has no evidence that such cooperation has developed. (Note: the head of INPI told Econoff in late 2006 that INPI and ANMAT were in close communication; the head of ANMAT told Econoff that there is no communication at all between the agencies. The head of INPI also told Econoff that ANMAT's decisions were constrained by applicable laws - the most relevant of which doesn't just allow but requires marketing approval of drugs already approved in certain other countries, including the U.S., and makes no mention of patents - and that the proper authority to make decisions over potentially conflicting patents was the court system, not ANMAT. End Note.) U.S. and other research-based pharmaceutical companies must incur the legal costs of obtaining injunctions to stop the production and sale of products produced by local pharmaceutical companies for which the research-based companies have Argentine patents.

¶12. (U) Law 25649 adopted in 2002 requires medical doctors to use a drug's generic name in all prescriptions. Doctors may also include a trademarked version of a drug (and no more than one) in their prescriptions, but pharmacists may still offer a substitute. If a medical doctor does not want a substitute provided, the reason must be indicated on the prescription. U.S. and other research-based pharmaceutical companies operating in Argentina believe this law diverts sales from innovative medicines to TRIPS-infringing copy products. Some of these firms argue that true generics do not exist in Argentina because copy products are not required to demonstrate their bioequivalence or bioavailability with original products, meaning local producers can sell drug copies that lack quality and safety assurances.

¶13. (SBU) Concerns have also been expressed by market players over criteria for patentability. U.S. biotech company Monsanto notes that INPI resolution 243/2003 precludes the issuance of patents for transgenic plants and animals, despite the fact that the patent law (Law 24481, a higher legal authority than a resolution) excludes from patentability only living material that is "pre-existing in nature." International pharmaceutical firms and CAEME told Post that, late in 2007, INPI refused to grant patents for two new pharmaceutical products for "lack of an inventive step." The products were reformulations of

previously patented medications (i.e., "evergreen" products), but such products had consistently received patents before. Both adjudications have been appealed back to INPI for review, so it is not clear if this represents an actual shift in patentability criteria.

¶14. (U) Argentina has yet to become a contracting state to the World Intellectual Property Organization's (WIPO) Patent Cooperation Treaty. The WIPO treaty's mutual patent recognition provisions among 135 Contracting Parties would eliminate much of INPI's current patent application backlog, since the majority of patent applications are from foreign individuals and entities.

Copyrights

¶15. (SBU) The incidence of Argentine copyright piracy via "traditional" CD and DVD copying does not appear to have declined in Argentina: The IIPA estimates that the music piracy rate was 60% in 2007, the same level as in 2006 and 2005, and estimates that business software piracy rose 2% to 77% in 2007. The frequency of illegal electronic downloads has expanded in line with the penetration of broadband access. On the positive side, the Argentine Customs Service and Argentina police forces made large seizures of blank and pirated optical disks: In January 2007, Customs seized 2.8 million blank CD-Rs (about 18% of legal CD sales in 2006) and 140,000 blank DVD-Rs (about 21% of estimated legal DVD sales in 2006) in the same shipment as 266,000 pairs of sunglasses with counterfeit brands. In March 2007, Customs destroyed approximately 400,000 copied music CDs and cassettes seized in several enforcement actions. In September 2007, a prosecutor in the Province of Buenos Aires discovered that a pirated CD producer/vendor was paying a police officer for protection. (It was later determined that the police officer had a warrant for his arrest dating to before he joined the police.) In October 2007, the Federal Police conducted the Argentine portion of Operation Jupiter (coordinate by Interpol), seizing an estimated US\$ 2.5 million in pirated and counterfeit goods and arresting 22. (NOTE: Interpol reports that the January 2007 Customs seizure came about as a result of Operation Jupite in 2006.) Also in October, the Gendarmeria seized over 8.6 million labels which were to be inserted in the cases of copied CDs, along with 136,000 pirated CDs and 273 CD burners in the notorious Greater Buenos Aires street fair called "La Salada" (see para 20). Four people were arrested. In December 2007, the Gendarmeria seized 500,000 pirated CDs and 100 CD burners and arrested five, also in "La Salada." The IIPA reports that total seizures of optical media were 4.6 million discs, up 162% from 1.7 million in 2006.

¶16. (SBU) Optical Media Piracy: Problems in this area include the widespread and open sale of pirated copies of CDs and DVDs, and increasing number of businesses offering home delivery (often coordinated entirely online) of pirated artistic content. Argentina's copyright regime, largely based on the 1933 Copyright Act (as amended), provides generally good nominal protection, including authority for Customs to seize imported products which violate copyrights. However, the lack of any real enforcement (in current practice, pirates will only face jail time if their involvement can also be defined as organized crime), coupled with the 2002 devaluation-linked disincentive to purchase legitimate - but now more expensive - imported products, has spurred piracy. A survey sponsored by the local American Chamber of Commerce in 2006 showed that, while more than half the population believes that piracy precludes job creation and facilitates tax evasion, two-thirds of Argentines have knowingly bought pirated products. A local attorney specializing in copyright issues told Econoff that, while the Argentine legal system does not function at a first-world level, it is "not bad for the region." The legal system will generally respond when needed to seize counterfeit media, the attorney said, but the existence of a personal relationship with relevant authorities is helpful.

¶17. (U) Illegal Downloads: Electronic delivery of copyright infringing materials is on the rise. CAPIF (the Argentine Chamber of Phonograph and Videograph Producers) estimates that 99% of all songs downloaded from the Internet in 2006 and 2007 were downloaded illegally over 600 million illegal songs were downloaded in Argentina in 2006, a nearly 50% increase from 2004. This growth is roughly in line with the increase in broadband internet access, which reached 13 million lines by the end of 2006. In 2007, legal music downloads, including cellphone downloads, grew 294%, reaching 4.1% by value of total legal music sales

in Argentina. In 2007, thanks to the International Federation for the Phonographic Industry (IFPI), a major file-sharing site called "HUB Puerto Digital" was shut down, with cooperation from the local internet service provider. This was reportedly the first peer-to-peer file-sharing hub based in Latin America to be shut down.

¶18. (U) Use/Procurement of Government Software: The GOA has yet to fully comply with its 1999 agreement with the local software industry to legalize unlicensed software used in some national government offices. GoA sources estimated in 2005 that over 90 percent of GoA agencies employing licensed software are using it illegally.

¶19. (U) Proposed Augmentation of Copyright Penalties: Motion picture and recording industry representatives proposed to Congress a modification of the criminal code in 2007 that would increase currently nominal criminal penalties and fines for copyright violations. It would also facilitate the destruction of pirated goods by providing discretion to the rights holder over disposition of infringing goods as well as make updates to the law to address modern technologies. While the bill was formally proposed for Senate consideration by two parliamentarians, including the current Senate President Pro Tempore, no legislative action was taken on the bill in 2007.

Trademarks

¶20. (SBU) According to a former head of INPI who continues to work in the IPR field, Argentina's 1982-era trademark law (Law 22362) does meet international standards, but nominal fines have not proven significant deterrents to falsification. A number of amendments to the Penal Code over the past six years have limited penalties to probation periods and rendered it less effective. The former INPI head and industry participants charge that these amendments render trademark protection inconsistent with WTO norms. They argue that existing remedies no longer meet TRIPS Article 61 requirements, which obligate members to adopt trademark laws which "include imprisonment and/or monetary fines sufficient to provide a deterrent" to counterfeiting. On a positive note, the process of renewing trademarks is an area where INPI's increasing efficiency has become evident. Whereas an applicant for renewal had to wait five months only a few years ago, the process is now completed in less than two months. Raids by local police on flea markets where counterfeit merchandise is openly sold have not been frequent or widespread enough to lessen the availability of pirated goods. Representatives of industries frequently targeted by counterfeiters claim that over forty large, well-established markets exist in Buenos Aires alone that are almost completely dedicated to the sale of counterfeit goods (in addition to innumerable smaller points of sale throughout the country). The largest of these markets, which is reputed to be the largest in South America, is called "La Salada." According to reports, 6,000 people work there, and up to 50,000 customers visit and make USD 9 million in purchases daily. (Note: The EU highlighted this market in its October 2006 301-equivalent report, which received considerable press attention in Argentina. End Note.) "La Salada" has a dangerous reputation, and post IPR contacts have told us that organized crime elements operate within the market. The enforcement actions mentioned in paragraph 15 are thought to be the first such actions in "La Salada," and they were also notable for the number of officials included - more than 300 in the October 2007 raid (see para 15).

¶21. (SBU) Amendments to Existing Legislation: Proposed legislation to modernize Argentina's trademark law died in committee in 2005. That draft law, introduced in August 2004, contained several measures that would have strengthened Argentina's anti-trademark piracy regime. Specifically, the draft law would have: involved Argentina's tax agency (AFIP) in trademark piracy (counterfeit merchandise) investigations; expanded the authority of Argentina's Financial Investigations Unit (UIF) to include trademark piracy among the crimes that entity is able to investigate; and increased penalties for those convicted of trademark piracy (eliminating community service as a possible sentence). An attorney who helped draft the text blamed the failure of the bill on the lethargy of local Argentine business chambers, which he said did not actively support the effort. The bill was, in fact, viewed negatively by several members of the American Chamber of Commerce's (AmCham) Intellectual Property Committee, some of whom preferred that more discretion be granted to the trademark holder to determine the degree of the penalty and the disposition of infringing goods. While the

legislation has not been re-introduced, the same congressman who originally submitted the draft bill in 2004 proposed in September 2006 the creation of a public attorney's office dedicated specifically to trademark crimes. The proposal has not moved forward. Meanwhile, the AmCham committee created a new draft trademark law, using the 2004 proposal as a base. This AmCham draft was presented to the Congress by a likeminded parliamentarian in June, but no further legislative action was taken in 2007 on this issue. In October 2007, another parliamentarian presented a proposal to approve the Madrid Protocol on international trademark applications, but no legislative action was taken on the bill in 2007.

¶22. (SBU) A court case on counterfeiting has sent poor signals about trademark protection in Argentina. In August 2007, a judge in Tucuman (a province in northwest Argentina) ruled that a vendor of counterfeit athletic shoes acted "in good faith" in part because he had legal invoices for his purchases. This decision came despite a reported agreement (presented as evidence in the case) between the vendor and the manufacturer, which acknowledged that the shoes were made with a copied trademark. The case is pending appeal by the trademark owner.

Enforcement actions

¶23. (SBU) Law 25986, which was passed in December 2004, prohibits the import or export of merchandise which violates international property rights. However, regulations to implement this law have yet to be issued three years later. The head of the Argentine Customs agency publicly blamed the delay on the then-Secretary of Industry (who later became the Minister of Economy). Further, in 2007 the executive branch submitted to the Argentine Congress a proposal to modify the law by restricting the authority of Customs to intervene only in cases of copyrights (which is already permitted under the Argentine copyright law) and trademarks, but eliminating intervention for any "other intellectual or industrial property rights." The proposal was put

forward by the then-Ministers of Economy and Health, and the Chief of Cabinet. The deletion appears consistent with TRIPS Article 51, which requires border measures to prevent "the importation of counterfeit trademark or pirated copyright goods." However, it appears non-compliant with TRIPS Article 28.1, which specifies that a patent shall allow its owner to "prevent third parties not having the owner's consent" from importing, as well as selling, that product. Interestingly, this never-enacted law was highlighted in the Rio Declaration of June 14, 2005, as an example of "effective and efficient border measures."

¶24. (SBU) In October 2006, AFIP (the Federal Administration of Public Revenue, an IRS-equivalent and with authority over Argentina's Customs agency) issued a decree which allows Customs to detain potential trademark violating merchandise until the holder of the locally registered trademark authenticates the shipment, and seize it if the holder does not. This new trademark interdiction program, which became operational in April 2007, has proven successful: According to data provided by Customs, the total retail value of trademark violations seized was US\$ 32.9 million - an 867% increase over such seizures in ¶2006.

¶25. (SBU) However, while regulation of law 25986 would also allow detention and seizure of merchandise which violates patent norms (such as copied pharmaceutical products), the decree only applies to trademarks. The program was lauded by the Secretary General of the World Customs Organization at a conference organized by the WCO in Buenos Aires in November. (The Director of Customs told IPR Officer that the WCO decided to hold the conference in Argentina in recognition of the new program.)

¶26. (SBU) On training, a Post-nominated Customs employee attended a USPTO course on border enforcement measures, paid for completely by USPTO. The employee is a key advisor of the Argentine Customs Director. Post also made arrangements for a total of nine GoA officials - three from the Gendarmeria, three from the Prefectura, 2 from the Federal Police, and one federal prosecutor - to attend a week-long IPR training course in Lima, Peru, at the International Law Enforcement Academy (ILEA) there.

¶27. (SBU) Argentine farmers have the legal right to replant - although not to sell - seed generated from a harvest originating from registered seeds without paying additional royalties. However, Argentine farmers have long sold registered seeds without payment of required royalties, a practice which continued in 2007. This is a widespread problem with soybean seed. According to the president of an Argentine seed producer association (in which Monsanto participates), 65-70% of all soy grown in Argentina is produced from Roundup Ready seeds for which no royalty have been paid. Farm associations and industry representatives generally agree that Argentina must elaborate and enact a new seed law that better protects intellectual property. The government of Argentina has recognized the need for a new law, but pressures from competing interests have delayed its development, and no complete draft was produced in 2007. The sale of registered seed from Argentina to neighboring countries, also without payment of royalties, has led to significant planting of unregistered biotech soybeans in Brazil and Paraguay. Argentina is a party to the 1978 Act of the International Union for the Protection of New Varieties of Plants (UPOV), but has not signed the 1991 UPOV convention revision. Monsanto reps have told post that they do not intend to introduce the next generation of Roundup Ready until Monsanto is assured that it will receive proper royalty payments. Ambassador, Embassy officers and visiting Congressmen have raised the Monsanto problem frequently in 2007, and the government of Argentina appears to be taking our (and Monsanto's) concerns into account while drafting the seed law.

Embassy IPR Initiatives

¶28. (SBU) Beyond significant regulatory and enforcement deficiencies detailed above, reluctance by the various GoA enforcement entities to cooperate with each other is a problem that has long impeded effective anti-piracy action in Argentina. The Embassy therefore encourages IPR training that brings together representatives from the full range of GOA institutions involved in anti-piracy efforts. The trust and familiarity resulting from such cooperation would help foster GoA inter-agency teamwork of the sort necessary to effectively combat piracy. One such opportunity occurred in 2007. With the assistance of the U.S. Department of Justice, Post brought GoA and Argentine private sector officials together for a workshop to explore and develop innovative IPR enforcement methodologies consistent with Argentina's legal and regulatory framework. GoA officials from nine different government entities attended, including a federal judge, a federal prosecutor, the Gendarmeria, the Prefectura, the Federal Police, Customs, AFIP (parent agency of Customs and IRS-equivalent), and prosecutors from both the Province and City of Buenos Aires. The successful end product was a draft manual, which participants plan to publish in March 2008 with DOJ, Post and INL assistance. The working group was the first public/private IPR working group to meet in Argentina in several years, if not ever. The workshop was a key deliverable in Post's 2007 strategic IPR plan (Ref C). A complete review of that plan and objectives for 2008 will be provided septel.

Comment and Recommendation

¶29. (SBU) Argentina has been on the Special 301 Priority Watch List since 1996. The success of the GoA's 2007 Customs trademark fraud interdiction program is laudable, and the increased seizures of optical media by Customs and police forces have been significant. However, there has been no significant positive movement on key issues of data protection, patent backlog, injunctive relief, and trademark and copyright fraud rates. The lack of pharmaceutical patent data protection is the issue most often called to Post's attention by U.S. industry participants, and appears to violate TRIPS Article 39.3. While INPI is functioning more efficiently and has won additional budget resources in each of the last three years, procedural improvements have only made minor inroads to date into a patent application backlog that significantly curtails the periods of patent protection. Patents that do get issued carry a questionable legal weight, as evidenced by ongoing problems with copied products, the lack of legal resolution of some infringement cases, and variable enforcement of those infringement cases where injunctions have been obtained. Estimated rates of

copyright and trademark violations have not diminished; Argentina's legislature and enforcement arms have not undertaken measures necessary to discourage new violations; and the Argentine judiciary remains an uncertain ally in the fight to protect intellectual property. While the Customs trademark fraud program, industry-proposed legislation to increase currently nominal criminal penalties and fines for copyright violations, and increased seizures of blank and pirated discs are positive steps, the improvements in Argentina's IPR regime this year were not particularly significant. To an extent, positive GoA actions to improve IPR protection in 2007 were offset by a proposed initiative to weaken legislative protection for imports of patented goods. The Embassy therefore recommends that Argentina remain on the Special 301 Priority Watch List for 2008. End Comment.

¶30. (SBU) Septel will review Post's performance on our 2007 IPR strategic plan, and suggest new 2008 country-specific and regional IPR initiatives. To see more Buenos Aires reporting, visit our classified website at: <http://www.state.sgov.gov/p/wh/buenosaires>

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